IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1647 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BACHUBHAI ALIAS TRIKAMLAL MOHANBHAI PATEL & Anr.
Versus
DEPUTY EXECUTIVE ENGINEER (CONSTRUCTION) & Anr.

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Appearance :
MR VIKRAM THAKORE for Petitioners
MR DIPEN DESAI AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/06/2007

ORAL JUDGMENT

1. Mr.Vikram Thakore, learned counsel for the petitioners and Mr.Dipen Desai, learned Assistant Government Pleader for the respondents.

2. On 18/4/1995, Dy.Executive Engineer (Construction) - respondent No.1 issued a notice to the petitioners stating inter-alia that the petitioners have made certain encroachments upon the land belonging to the respondents. On 25/4/1995, a reply was filed and thereafter, a final order was made on 29/1/1997 that if the petitioners would not remove the encroachment, the encroachment would be removed at his risk to costs and consequences, the petitioners being aggrieved by the said order, are now before this Court.

3. Mr.Thakore, learned counsel for the petitioners submits that perusal of notice dtd.18/4/1995 would clearly show that the notice is absolutely vague, it does not give details of the land, nor the extent of the encroachment. According to him no inquiry was made, no opportunity of hearing was afforded, no opportunity to lead evidence was given to the petitioners and abruptly out of blue, came order dtd.29/1/1997. With the permission of the Court, he submits that the Dy.Executive Engineer under the law, would have no authority to issue such a notice requiring the petitioner to file a reply or pass an order like that. According to him, if the respondent No.3 was aggrieved by the alleged encroachment, then, the matter

should have been referred to the competent authority for removal of the encroachment.

4. As usual, the State Government could not come out of its slumber and is still enjoying its hibernation. Almost after 10 years, the State has not filed its reply. I am sorry to record that when any writ application is filed and notices of such writ application are served upon the State Government, then, the State is obliged not only to appear through Assistant Government Pleader or Government Pleader, but is also obliged to file its reply and assist the Court. Even 10 years long period could not work as an eye opener and the State feels that whatever its counsel would say in the Court, would be accepted by the Court as a final word. I must remind the State and its officers that a popular Government is not the one which wins the election, but the popular Government would be the one, which wins the confidence of the public and acts in accordance with law in the Court and everywhere. Unfortunately, in almost every case, the State has not filed its reply and the counsel whether a junior or a senior, with a long face, folded hands and begging speech would ask the Court to adjourn the case enabling the counsel for the State either to complete the records, seek

instruction or file the reply.

5. Be that as it may. I do not wish to say anything further in the matter, because, when such advises are given to the State Government and its officers, this Government feels that the High Court is trespassing on their jurisdiction and is unnecessarily advising them. They feel that come what may, nobody including the High Court has any right to ask them to come out of their deep sleeps, wake up, rise to the occasion and move swiftly. I know I am wasting my time and energy and unnecessarily lengthening my judgement, but my judicial conscience and OATH remind me that I must ask the State Government to act in accordance with law. When the executive or administration sleeps, illegality and injustice creeps and looking to the sorrow of common people, justice weeps. If introspection is not permissible in the blind corridors of the State Government / Secretariat, then at least officers of the State must look into the prospects of their case and try to understand that they are obliged to assist the judges so that final justice is done between the parties.

6. Impugned notice dtd.18/4/1995 issued by the Dy.Executive Engineer (Construction) - respondent No.1 is patently illegal, as it does not give details of the land

nor the extent of the encroachment, nor does it annex a map showing the spot position. The petitioners had filed its reply, but from the records it does not appear that any inquiry was made in to the subject, the petitioners were allowed any opportunity to lead evidence or to put their defence. It also does not appear that the said Dy.Executive Engineer examined anybody in presence of the petitioners, had supplied evidence to the petitioners and/or found as a fact that the petitioners had made particular encroachment. The records do not show that the Dy.Executive Engineer would be a competent authority to issue such notices and direct dispossession of the present petitioners. An officer would be entitled to remove encroachment, if such powers are conferred upon such officer by the State Government either by a special Notification or by conferring some statutory powers. In the present case, unfortunately, the State Government is enjoying silence as a bliss.

7. Impugned order dtd.29/1/1997 passed by the Dy.Executive Engineer (Construction) - respondent No.1 is patently illegal, it cannot be allowed to stand. It is accordingly quashed. The Impugned notice dtd.18/4/1995 issued by the Dy.Executive Engineer (Construction) -

respondent No.1 is also quashed, as the same does not give details of anything.

8. The petition is allowed. Rule is made absolute. No costs.
9. Let a copy of this order be sent to the Chief Secretary so that he may know as to how the State is being defended in this Court.

(R.S. GARG, J.)

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